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ASAPH H. HALL,
Federal Railroad Administrator.
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Determination of Critical Habitat for the Florida Everglade Kite and Dusky Seaside Sparrow

The Director, United States Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a Proposed Rulemaking which would determine Critical Habitat for the Florida Everglade Kite (*Rostrhamus sociabilis plumbeus*) and the Dusky Seaside Sparrow (*Ammodramus maritima nigrescens*). This Proposal is issued pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act).

BACKGROUND

The Florida Everglade Kite and Dusky Seaside Sparrow are both restricted to Florida, and have been officially listed as Endangered since 1967. Hope for the survival and recovery of these species depends in large part on the maintenance of the particular kinds of habitat for which they are adapted. A notice of intent to determine Critical Habitat for both species was published by the Service in the FEDERAL REGISTER of May 16, 1975 (40 FR 21499-21500). Subsequently, Service-appointed recovery teams for each species developed recommendations for Critical Habitat designations. The Director of Region 4 of the Service in Atlanta forwarded the recommended delineations for the Kite on June 11, 1976, and for the Sparrow on July 26, 1976.

With respect to the Florida Everglade Kite, the areas delineated below contain the best and largest remaining stretches of suitable habitat for the species. These areas support substantial numbers of Apple Snails (*Pomacea paludosa*) upon which the Kites depend for food. The Snails, in turn, are dependent on maintenance of water levels in the marshes. The delineated areas have suitable water levels or have good potential for being managed for maximum snail production.

With respect to the Dusky Seaside Sparrow, the areas delineated below contain the world's entire population of the species. These areas are covered predominantly by open expanses of moist cordgrass (*Spartina bakeri*) savannas, about 10 to 15 feet above mean sea level. The Sparrow seems to be fully adapted to this restricted habitat with its high salinity aspects.

Information obtained during the comment period may allow more restrictive final delineation of these Critical Hab-

itats. It is emphasized also that additions or modifications may be proposed in the future.

EFFECTS OF THE RULEMAKING

The effects of this determination are involved primarily with section 7 of the Act, which states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term "Critical Habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs of survival of that species; (2) actions by a Federal agency affecting Critical Habitat of a species would not conform with Section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 of the Act are applicable in a certain area.

A Critical Habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a Critical Habitat delineation so as to cover additional habitat under Section 7 provisions, or to

reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can most conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat.

PUBLIC COMMENTS SOLICITED

The Director intends that the rule finally adopted be as accurate as possible in delineating the Critical Habitat of the Florida Everglade Kite and the Dusky Seaside Sparrow. The Director therefore, desires, to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party on these Proposed Rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this Proposal. An environmental assessment has been prepared in conjunction with this proposal, and is available for inspection during regular business hours at the Service's Office of Endangered Species, 1612 K Street, NW, Washington, D.C. 20240.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this Rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than January 31, 1977 will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office in Suite 601612 K Street, NW., Washington, D.C.

Dated: November 16, 1976.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend 50 CFR Part 17:

1. By amending the Table of Section 17.95 of Part 17 to read as follows:

Subpart F—Critical Habitat	
Sec.	
17.95(b)(3)	Florida Everglade Kite.
17.95(b)(4)	Dusky Seaside Sparrow.

2. By adding a new § 17.95(b)(3) and § 17.95(b)(4) reading as follows:

§ 17.95(b)(3) Florida Everglade Kite.

The following areas are Critical Habitat for the Florida Everglade Kite (*Rosthamus sociabilis plumbeus*):

FLORIDA

Areas of land (predominantly marsh), water, and airspace (exclusive of existing man-made structures or settlements which are not necessary to the survival or recovery of the species), with the following components (Tallahassee Meridian): St. Johns Reservoir, Indian River County: T. 33 S., R. 37 E., SW $\frac{1}{4}$ Sec. 6, W $\frac{1}{2}$ Sec. 7, Sec. 18, Sec. 19. Cloud Lake Reservoir, St. Lucie County: T. 34 S., R. 38 E., S $\frac{1}{2}$ Sec. 16, N $\frac{1}{2}$ Sec. 21. Strazzulla Reservoir, St. Lucie County: T. 34 S., R. 38 E., SW $\frac{1}{4}$ Sec. 21. Western parts of Lake Okeechobee, Glades and Hendry Counties, extending along the western shore to the east of the levee system and the undiked high ground at Fisheating Creek, and from the Hurricane Gate at Clewiston northward to the mouth of the Kissimmee River; including all the *Eleocharis* flats of Moonshine Bay, Monkey Box, and Observation Shoal; but excluding the open water north and west of the northern tip of Observation Shoal, north of Monkey Box, and east of Fisheating Bay.

Loxahatchee National Wildlife Refuge (Central and Southern Florida Flood Control District Water Conservation Area 1), Palm Beach County, including Refuge Management Compartments A, B, C, and D; and all of the main portion of the Refuge as bounded by Levees L-7, L-39, and L-40. Central and Southern Florida Flood Control District Water Conservation Area 2A, Palm Beach and Broward Counties, as bounded by Levees L-6, L-35B, L-36, L-38, and L-39. Central and Southern Florida Flood Control District Water Conservation Area 2B, Broward County, as bounded by Levees L-35, L-35B, L-36, and L-38.

Central and Southern Florida Flood Control District Water Conservation Area 3A, Broward and Dade Counties, as bounded by Florida Highway 84; Levees L-68A, L-67A (north of Miami Canal), L-67C (south of Miami Canal), L-29, and L-28; and a line along the undiked northwestern portion of the Area. That portion of Everglades National

Park, Dade County, within the following boundary: beginning at the point where the Park boundary meets Florida Highway 94 in T. 54 S., R. 35 E., Sec. 20; thence eastward and southward along the Park boundary to the southwest corner of Sec. 31 in T. 7 S., R. 37 E.; thence southwestward along a straight line to the southwest corner of Sec. 2 in T. 58 S., R. 35 E.; thence westward along the south sides of Sec. 3, 4, 5, and 6 in T. 58 S., R. 35 E., to the Dade-Monroe County line; thence northward along the Dade-Monroe County line to the Park boundary; thence eastward and northward along the Park boundary to the point of beginning.

Pursuant to section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these Critical Habitat areas.

§ 17.95(b)(4) Dusky Seaside Sparrow.

The following areas are Critical Habitat for the Dusky Seaside Sparrow (*ammodramus maritima nigrescens*):

FLORIDA

Cordgrass (*Spartina bakerii*) savannas and associated land, water, and air space (exclusive of existing man-made structures or settlements which are not necessary to the survival or recovery of the species) within the following boundary, Brevard County: Beginning at the point where Florida Highway 524 intersects Interstate Highway 95; thence westward along Florida highways 524 and 520 to the main channel of the St. Johns River; thence northward along said channel to Florida Highway 46; thence eastward along Florida Highway 46 to Interstate Highway 95; thence southward along Interstate Highway 95 to the point of beginning. Marshes and associated airspace within the mosquito control impoundments designated by the Brevard County Mosquito Control District as T-10-J and T-10-K, northwest of Florida Highway 406 on the Merritt Island National Wildlife Refuge, Brevard County.

Pursuant to section 7 of the Act, all Federal agencies must take such action

as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these Critical Habitat areas.

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Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Determination of Critical Habitat for the Grizzly Bear: Extension of Public Hearing

In the FEDERAL REGISTER of November 11, 1976 (41 FR 49859), public hearings on a proposal to determine Critical Habitat for the grizzly bear were announced. These public hearings are scheduled to be held at Cody, Wyoming on December 8, 1976; Missoula, Montana, on December 10, 1976; St. Anthony, Idaho, on December 14, 1976; and Washington, D.C., on December 17, 1976. Due to the great interest in this issue expressed by persons in northwestern Montana, it is deemed necessary to extend the hearing scheduled for Missoula, Montana on December 10, 1976, to Kalispell, Montana on Saturday, December 11, 1976. The hearing will be held at the Outlaw Inn, 1701 Highway 93 South, Kalispell, Montana 59901, from 1 p.m. to 4 p.m. and 7 p.m. to 9 p.m. Any questions concerning this extended public hearing should be directed to John Davis, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, Telephone 303/234-4600.

Dated: November 30, 1976.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

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